

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.362 OF 2005

Mangesh Dinkar Naringrekar ...Appellant

Vs.

Shakuntala Jaywant Amberkar & Ors. ...Respondents

Mr.R.G.Ketkar for the Appellant

Mr.A.S.Khandeparkar for the Respondent Nos.1 and 2.

CORAM: A.S.OKA, J.

DATED: APRIL 13, 2006.

P.C.:

1. Heard Shri Ketkar for the Appellant. The Appeal is by the original Plaintiff. The Trial court decreed the suit filed by the original Plaintiff. In an Appeal preferred by the defendants, the first Appellate Court has interfered.

2. Shri Ketkar for the Appellant submitted that the Appellant relied upon the two maps drawn by the Court Commissioner appointed in an earlier suit bearing R.C.S.No.69 of 1985 to which the present Respondents were party defendants. He submitted that based on the said maps a decree was passed against the Respondents in the said suit which has been confirmed in Appeal. He submitted that the Appellate Court committed an error by holding that the said two maps were not admissible in evidence.

3. I have considered the submissions. The Appellate Court has observed that the maps at Exh.57 and 68 drawn by the Court Commissioner appointed in the earlier suit were admissible in evidence by virtue of provisions of Rule 10(2) of Order 26 of the Code of Civil Procedure, 1908 in the earlaier suit. The Appellate Court observed, and in my view rightly, that the certified copies of the said maps could not have been relied upon by the present Appellant in the present suit without examining the Court Commissioner who had drawn the said maps. That is the reason why the Appellate court came to the conclusion that the Appellant cannot rely upon the said maps in absence of proof. Examination of the plaintiff in earlier suit will not help the Appellant as the said Plaintiff could not have proved the correctness of the contents of the maps drawn by the Court Commissioner.

4. In my view, there is no substantial question of law. Second Appeal is dismissed with no order as to costs.

Judge.